

TRANSMITTAL LETTER
(General - Patent Pending)

O I P E

DEC 26 2000

Docket No.
9872

In Re Application Of: In re Public Use Proceeding of: Ted Christopher

Serial No.
08/746,360

Filing Date
November 8, 1996

Examiner
F. Jaworski

Group Art Unit
3305

Title: FINITE AMPLITUDE DISTORTION-BASED INHOMOGENEOUS PULSE ECHO ULTRASONIC
IMAGING

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Transmitted herewith is:

Applicant's Objections To The Admissibility Of Petitioner's Evidence

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in the above identified application.

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John S. Sensny
Signature

Dated: December 20, 2000

John S. Sensny
Registration No. 28,757

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I certify that this document and fee is being deposited on December 20, 2000 with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Grace Colucci

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Grace Colucci

Typed or Printed Name of Person Mailing Correspondence

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Public Use Proceeding of:
Ted Christopher

Applicant(s): Ted Christopher

Examiner: F. Jaworski

Serial No.: 08/746,360

Art Unit: 3305

Filed: November 8, 1996

Docket: 9872

For: FINITE AMPLITUDE DISTORTION-
BASED INHOMOGENEOUS PULSE
ECHO ULTRASONIC IMAGING

Dated: December 20, 2000

73
FJ
1/3/01

**APPLICANT'S OBJECTIONS TO THE ADMISSIBILITY
OF PETITIONER'S EVIDENCE**

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231

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Dear Sir:

In accordance with 37 C.F.R. §§1.292(a) and 1.671-1.685 Applicant hereby submits objections to the admissibility of the testimony and exhibits submitted by Petitioner.

Objections to the Hetz Declaration

Applicant objects to the admissibility of all statements made in the Hetz Declaration relating to whether the alleged copies of video tapes referred to in the Declaration are in fact true copies on the grounds that:

- a. The Declaration does not establish Mr. Hetz as an expert qualified to render an opinion as to whether the alleged copies of tapes are in fact true copies.

- b. Mr. Hetz has no personal knowledge about the actual making of the copies of the tapes.
- c. The Declaration is not probative in that the stated conclusion that the alleged copies of tapes are true copies is based only on a comparison of portions of the copies.
- d. The Declaration is not probative because there is no showing that any of the tapes discussed in the Declaration were the ones submitted to the Patent Office or to Applicant.
- e. The Declaration is not probative because there is no showing that the tapes did not change after they were reviewed by Mr. Hetz.

Objections to the Chandler Declaration

- 1. Applicant objects to the admissibility of all statements made in the Chandler Declaration relating to whether the alleged copies of video tapes referred to in the Declaration are in fact true copies on the grounds that:
 - a. The Declaration does not establish Mr. Chandler as an expert qualified to render an opinion as to whether the alleged copies of tapes are in fact true copies.
 - b. The Declaration is not probative because the opinion given in paragraph 5 that certain tapes are copies of original tapes was made about five years after the originals were shown.
- 2. Applicant objects to the admissibility of all statements made in the Chandler Declaration relating to what the video tapes referred to in the Declaration show on the grounds that:

- a. The Declaration does not establish Mr. Chandler as an expert qualified to analyze the images of the videotapes.
 - b. All statements made in the Declaration about what the tapes show are hearsay.
 - c. The Declaration does not provide the basis for the opinions, in paragraph 6, that the videotape displayed images at the harmonic frequency, and that the tape displayed images at the harmonic frequency before contrast agent was added.
 - d. The Declaration does not describe with sufficient particularity how the Serial Number 1122 actually operated in the procedure referred to in paragraph 4.
 - e. The Declaration does not provide the basis for the opinion, in paragraph 5, that harmonic images on the tape were generated at least in part as the result of finite amplitude distortion.
3. Applicant objects to all statements made relating to the video tape referred to in paragraph 4 on the grounds that Applicant has not been given reasonable access to the original videotape.

Objections to the Mulvagh Declaration

1. Applicant objects to the admissibility of all statements made in the Mulvagh Declaration relating to what the video tapes referred to in the Declaration show on the grounds that:
 - a. All statements made in the Declaration about what the tapes show are hearsay.

- b. The Declaration does not establish Dr. Mulvagh as an expert qualified to analyze the images on the tapes.
 - c. The Declaration does not provide a basis for the opinion, in paragraph 4, that in the videotape, harmonic images of the tissue were seen.
 - d. Dr. Mulvagh has no personal knowledge of how the experiment, referred to in paragraph 4, was conducted or of how the Acuson machine actually worked in that experiment.
 - e. Dr. Mulvagh has no personal knowledge of how the video tapes referred to in paragraphs 3, 4 and 5 were made.
- 2. Applicant objects to the admissibility of all statements made in the Mulvagh Declaration relating to whether alleged copies of video tapes referred to in the Declaration are in fact copies on the grounds that:
 - a. The Declaration does not qualify Dr. Mulvagh as an expert qualified to render an opinion as to whether alleged copies of tapes are in fact true copies.
 - b. The Declaration does not provide the basis for the opinions, in paragraph 5, that the first videotape is a partial copy of portions of the presented videotape, and that the second videotape is a complete copy of the presented videotape.
- 3. Applicant objects to all statements made relating to the videotape referred to in paragraph 3 on the grounds that Applicant has not been given reasonable access to the original videotape.

Objections to the Main Declaration

1. Applicant objects to the admissibility of all statements made in the Main Declaration relating to what the video tapes referred to in the Declaration show on the grounds that:
 - a. The Declaration does not establish Ms Main as an expert qualified to analyze the images on the tapes.
 - b. Ms. Main does not have personal knowledge of how the modified Acuson 128 system actually worked, or how the system actually worked during the studies referred to in paragraph 4.
 - c. All statements made in the Declaration about what the tapes show are hearsay.
 - d. The Declaration does not provide the basis for the opinions, in paragraph 7, that the videotape showed images of the dog's heart in the absence of contrast agent, and that harmonic images of the tissue were seen.
 - e. Ms. Main does not have personal knowledge of how the system 1122 actually worked in the experiment discussed in paragraph 10.
 - f. There is no basis for the opinions, in paragraphs 14 and 15, that in certain images of the videotape, no contrast agent is present, or that the displays show harmonic images of just tissue.
2. Applicant objects to the admissibility of all statements made in the Main Declaration relating to the Super-VHS version of the videotape referred to in paragraph 13, on the grounds that:

- a. The Declaration does not qualify Ms. Main as an expert qualified to render an opinion as to whether the Super-VHS version has the same images as were on the Betacam version.
 - b. The Declaration does not provide the basis for the opinion, in paragraph 13, that the Super-VHS version has the same images as were on the Betacam version.
3. Applicant objects to all statements made relating to the videotapes referred to in paragraphs 4, 6 and 10 on the grounds that Applicant has not been given reasonable access to the original videotape.

Objections to the first Holley Declaration

1. Applicant objects to the admissibility of all statements made in the first Holley Declaration relating to what the tapes referred to in the Declaration show on the grounds that:
 - a. The Declaration does not establish Mr. Holley as an expert qualified to analyze the images on the tapes.
 - b. Mr. Holley has no personal knowledge of how the Acuson 128 system, referred to in paragraph 3, actually worked during the studies referred to in paragraphs 3 and 4.
 - c. All statements made in the Declaration about what the tapes show are hearsay.
 - d. The Declaration does not provide the basis for the opinion, in paragraph 3, that the tape shows harmonic imaging in the absence of contrast agent.

e. The Declaration does not provide the basis for the opinions, in paragraphs 7 and 8, that the videotapes show harmonic tissue imaging in the absence of a contrast agent, or that these second harmonic distortions make a measurable contribution to the images.

2. Applicant objects to paragraphs 2, 3 and 4 on the grounds that it is not clear which videotape is being referred to. If reference is to a videotape that Applicant has not been given reasonable access to, Applicant further objects to all statements relating to the videotape on the grounds that Applicant has not been given reasonable access to the original video tape.

Objections to the second Holley Declaration

1. Applicant objects to the admissibility of all statements made in the second Holley Declaration relating to whether Frames A-E are accurate copies of selected frames of the Acuson tape on the grounds that:

a. The Declaration does not establish Mr. Holley as an expert qualified to render an opinion about whether Frames A-E are accurate copies of selected frames of the Acuson Tape.

b. The Declaration does not provide the basis for the opinion, in paragraph 3, that Frames A-E are accurate copies of selected frames of the Acuson Tape.

2. Applicant objects to the admissibility of all statements made in the second Holley Declaration relating to what Frames A-E and the corresponding portions of the Acuson Tape show or teach on the grounds that:

a. The Declaration does not establish Mr. Holley as an expert qualified to analyze the images in the frames.

- b. Mr. Holley has no personal knowledge of how the images in the frames were obtained, or how the imaging system actually worked when those images were obtained.
- c. The Declaration does not provide the basis for the opinion in paragraph 4 that images were obtained by transmitting ultrasonic energy into an animal at 2.5 MHz, selectively receiving ultrasonic harmonic signals from the animal at 5.0 MHz while blocking ultrasonic signals at 2.5 MH, and displaying the harmonic signals.
- d. The Declaration does not provide the basis for the opinion, in paragraph 4, that the images in Frame D were obtained in the absence of contrast agent.
- e. All statements made, in paragraphs 4, 5 and 6, about what the Acuson Tape and what Frames B, C, D and E show are hearsay.
- f. The Declaration does not provide the basis for the opinions, in paragraph 5, that images around frame D include a visually perceptible component formed from the second harmonic tissue response, or that other images of animal tissue were imaged at the second harmonic of the fundamental transmitted frequency in the absence of contrast agent while blocking ultrasonic echo signals at the fundamental transmitted frequency.

Objection to the Clark Declaration

Applicant objects to the admissibility of this Declaration on the grounds that it is not relevant.

Objections to the Sheldon Declaration

Applicant objects to the admissibility of this Declaration in its entirety because it is not probative. There is no showing in the Declaration that any of the copies referred to are duplicates of the original tapes.

Applicant further objects to all statements made in the Sheldon Declaration relating to the Betacam tape referred to in paragraph 2 on the grounds that Applicant has not been given reasonable access to the original Betacam tape.

Objections to the Exhibits

Applicant objects to the admissibility of Exhibits 1-3 and 5-9 on the following grounds:

- a. The video tapes (Exhibits 1-3) are not shown to be duplicates of the original videotapes, and Frames A-E (Exhibits 5-9) are not shown to be duplicates of frames of the original tape "Contrast Echocardiography Investigations."
- b. Testimony has not been submitted that properly analyzes any of these Exhibits.
- c. These Exhibits do not show the procedures used to obtain the images.
- d. Prima facie, these exhibits do not give any indication that any of the images were obtained in the absence of a contrast agent.
- e. Applicant objects to the videotape "Copy of 'Contrast Echocardiography Investigations Copy A'" (Exhibit 1) on the grounds that Applicant has not been given reasonable access to the original Betacam tape referred to in paragraph 13 of the Main Declaration and that was actually presented at the Americal Society of Echocardiography.

Applicant also objects to Exhibit 2 on the grounds that Applicant has not been given reasonable access to the original Betacam tape referred to in paragraph 10 of the Main Declaration.

f. Applicant objects to the videotapes "Copy of 'Dr. Mulvahy Video II Imaging'" and "Copy of 'Mayo Clinic #CSE, Echo Date 9-28-94, Complete Copy'" (Exhibits 2 and 3) on the grounds that Applicant has not been given reasonable access to the original videotape referred to in paragraph 3 and actually shown at the presentation, on or about September 30, 1994, at the conference "Advances in Echocardiography: Contrast Echocardiography Perfusion Imaging."

g. Applicant further objects to the videotapes (Exhibits 1-3) on the grounds that testimony has not been submitted establishing the specific conditions under which the video tapes were actually shown and seen in public.

h. Applicant objects to Frames A-E (Exhibits 5-9) on the grounds that these Exhibits are not probative and are prejudicial because still pictures of frames of the videotapes were not shown at any of the alleged public showings of the videotapes.

If there are any questions about this matter, please telephone the undersigned.

Dated: December 20, 2000

Respectfully submitted,


John S. Sensny
Registration No. 28, 757

Scully, Scott, Murphy & Presser
400 Garden City Plaza
Garden City, New York 11530
JSS:gc

PROOF OF SERVICE

In accordance with 37 C.F.R. §1.248, Applicant hereby certifies that a duplicate copy of this paper, Applicant's Objections to the Admissibility of Petitioner's Evidence, and all supporting materials have been served on Petitioner's attorney on December 20, 2000, via first class mail at the following address:

William A. Webb, Esq.
BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, IL 60610

Dated: December 20, 2000

John S. Sensny
John S. Sensny
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JSS:gc

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

I hereby certify that this correspondence, Applicant's Objections To The Admissibility Of Petitioner's Evidence and Proof of Service, is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

Dated: December 20, 2000


Grace Colucci